

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

In the specification, paragraph 0006 has been amended and the Abstract has been amended.

Claims 6-24 are requested to be withdrawn.

Claim 1 is currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-5 (5 claims) are now pending in this application.

On page 2, paragraph 1 of the Office Action, the Examiner has made the restriction requirement final. In response, Applicants confirm that they have withdrawn claims 6-24 from further prosecution and reserve the right to file a divisional application relative to those claims.

Applicants submit that the currently named inventors are the inventors of the remaining claims in the application.

On page 3, paragraph 4 of the Office Action, the Examiner has objected to the abstract of the disclosure because legal phraseology i.e., “comprises” and “comprising” are in the text. In response, Applicants have amended the abstract to delete those phrases and add terminology consistent with the remaining amended claims as discussed below. Accordingly, Applicants respectfully request that the Examiner withdraw his objection to the abstract.

The Applicants have amended paragraph 0006 of the specification to reflect the amendment to claim 1 as discussed below. No new matter has been added.

On page 3, paragraph 6 of the Office Action, the Examiner has rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by VanNess, et al (USPN: 4,419,300). VanNess discloses a non-corrosive, non-staining evaporative cooler (see Title) which utilizes injection molded elastomers (see col. 8, lines 28-34) and uses self tapping fasteners to mechanically couple several components of the enclosure (see col. 5, lines 14-21).

In response, Applicants have amended independent claim 1 of the present application by adding the word “metal” in front of the phrase “base sheet” and “side wall” in the second line and the ninth line of claim 1. Applicants have also added the phrase “without fasteners” in line 10 of claim 1. Support for these amendments can be found in paragraph 0020 and 0024 of the present application as originally filed. Applicants submit that VanNess teaches away from the use of metal housings in col. 8, lines 55-60 of VanNess. Therefore, independent claim 1, as amended, is not anticipated by VanNess and applicants respectfully request that the Examiner withdraw his rejection of claim 1, as amended, under 35 U.S.C. §102(b).

On page 4, paragraph 9 of the Office Action, the Examiner has rejected claims 1-3 under 35 U.S.C. §103(a) as being unpatentable over VanNess, et al and further in view of either LeFevre, et al (USPN: 4,395,448) or Aull, et al (USPN: 6,544,628). The Examiner believes that LeFevre and/or Aull disclose it is known within the evaporative cooling art to attach two sheets of material together to form a corrosive resistant joint using a punch and die press, that it would have been obvious to artisans of the time to utilize such punch and die sheet joining means in view of the teaching of either LeFevre or Aull to provide a corrosion resistant joint between the housing elements of the evaporative cooler.

Applicants respectfully traverse the Examiner’s position. LeFevre discloses a filling sheet attachment means as utilized in a cooling tower such as at a power plant or nuclear power generation facility. The fill 18 is a plurality of sheets of deformable composition such as a heat formable plastic such as polyethylene. There is no teaching or suggestion in

LeFevre to couple sheet metal pieces to form a housing. LeFevre teaches the coupling of plastic sheets as a fill element (see Fig. 2) and not as a housing as disclosed and claimed in the present application. Likewise, Aull teaches the coupling of a plurality of sheets used as a media to filter, scrub or transfer heat in various applications. There is no suggestion or teaching in Aull that the method of coupling the sheets together be used for structural housings as disclosed and claimed in the present application.

Applicants submit that the Examiner is merely speculating as to a reason for combining the VanNess, LeFevre and Aull references. Specifically, the combination of the references have to be based on a teaching, motivation or suggestion in the references to combine them. There is no such teaching in VanNess, LeFevre or Aull. VanNess utilizes plastic elements that are secured with fasteners. LeFevre and Aull couple sheets of material together that are used as a filtering media, not as a housing structure to support such media. Applicants submit that one ordinarily skilled in the art would not look to LeFevre, VanNess or Aull to obtain that which is disclosed and claimed in the present application.

Applicants submit that the Examiner is relying on hindsight to make the above obviousness rejection of the cited claims under 35 U.S.C. §103(a). Applicants believe the Examiner is basing his rejection on the mere identification of the prior art of individual components of the claimed limitations in the present application. The Examiner has not made a particular finding as to the reason a skilled artisan, with no knowledge of the claimed invention would have selected the components for a combination in the manner claimed in the present application. The reasons cited by the Examiner for his suggested combination is not identified in either VanNess, LeFevre, or Alull and in fact, the suggested combination and modification to VanNess would render the VanNess invention inoperative or ineffective. See MPEP §2143.01. Therefore, Applicants submit that, as stated above, the claims, as amended, are patentably distinct from the prior art cited by the Examiner and that one ordinarily skilled in the art would not be compelled to combine the elements cited by the Examiner to obtain that which is disclosed and claimed in the present application. Accordingly, Applicants respectfully request that the Examiner withdraw his rejection of claims 1-3 under 35 U.S.C. §103(a).

On page 5, paragraph 10 of the Office Action, the Examiner has rejected claims 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over the referenced combination as applied to claims 1-3 above, and further in view of Master Cool II “the most effective evaporative cooler you can buy”. In response, Applicants reiterate their comments with respect to claims 1 and 3 above and submit that independent claim 1, as amended, is patentably distinct from the cited references. Specifically, in contrast to VanNess, the present application discloses that fasteners are not used. The fasteners used by VanNess would negate the corrosion resistant coatings applied to the sheet metal components of the housing as disclosed and described in the present application. Accordingly, since claims 4 and 5 depend directly or indirectly from independent claim 1 as amended, those claims also are not obvious under the cited prior art. Therefore, Applicants respectfully request that the Examiner withdraw his rejection of claims 4 and 5 under 35 U.S.C. §103(a).

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 07-29-05

By

A handwritten signature in cursive script, appearing to read "James A. Wilke", written over a horizontal line.

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